

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs August 11, 2003

**SANTOS PARRA-SOTO v. COLIS NEWBLE, JR.**

Appeal from the Circuit Court for Davidson County  
No. 02C-2822     Hamilton V. Gayden, Jr., Judge

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**No. M2003-00090-COA-R3-CV - Filed November 25, 2003**

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A prisoner in the custody of the Department of Correction filed a Petition for Writ of Certiorari to review a decision by the Board of Probation and Parole declining to release him on parole. Although the trial court notified him that under Tenn. Code Ann. § 41-21-807 he had to make at least a partial payment of the filing fee before his case could be considered, the prisoner failed to do so. The court accordingly dismissed his Petition. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Affirmed and Remanded**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Santos Parra-Soto, Tiptonville, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Michael Moore, Solicitor General; Pamela S. Lorch, Assistant Attorney General, for the appellee, Colis Newble Jr., Director Tennessee Board of Probation and Parole.

**OPINION**

Santos Parra-Soto is an inmate in the custody of the Tennessee Department of Correction. He was convicted on September 27, 2001, of possession with intent to sell over 100 grams of methamphetamine. On April 24, 2002, he was given a parole hearing. The Parole Board declined to release him, and deferred the next hearing until April of 2004. The reason checked on the Notice of Board Action was that “[t]he release from custody at this time would Depreciate the seriousness of the crime of which the offender stands convicted, or promote Disrespect of the law.” Mr. Parra-Soto appealed this decision to Colis Newble Jr., the Director of the Tennessee Board of Probation and Parole. His appeal was turned down.

On October 3, 2002, Mr. Parra-Soto filed a timely Petition for Writ of Certiorari in the Circuit Court of Davidson County, accompanied by an Affidavit of Indigency.<sup>1</sup> The Petition alleged that Mr. Parra-Soto, a Mexican citizen, had been denied parole because of his “Spanish Nationality” and that the Board abused its powers by failing to acknowledge that in the event he was paroled, a detainer lodged against him by the U.S. Immigration Service would prevent him from entering the streets of this country. An Inmate Trust Fund Certification Balance, filed on the same day, stated that Mr. Parra-Soto had a current cash balance of \$85.91, and that his average account balance for the previous six months had been \$101.91.

On November 7, 2002, the trial court filed an Order which stated that the Petitioner had not complied with the requirements of Tenn. Code Ann. § 41-21-801 et seq, which deals with lawsuits by inmates. Specifically, Mr. Parra-Soto had not filed an affidavit of previous claims and lawsuits as required by Tenn. Code Ann. § 41-21-805, and he not made partial payment of the \$37.50 filing fee, as required by Tenn. Code Ann. § 41-21-807. The court’s order gave Mr. Parra-Soto twenty days to comply or face dismissal of his Petition.

Within that period, the State filed a Motion to Dismiss the Petition for failure to state a claim under Rule 12.02(6) Tenn. R. Civ. P. The State argued that in order to state a claim for violation of the Equal Protection Clause, a Petitioner must allege facts demonstrating that it is more likely than not that he has been discriminated against because of race or national origin, and that a mere assertion of discrimination was not sufficient.

For his part, the Petitioner filed Motions for appointment of counsel and for waiver of the filing fee, a Petition for Habeas Corpus ad Prosecandum and/or ad Testificandum, a reply to the State’s Motion which included a request for oral argument, and the affidavit required by Tenn. Code Ann. § 41-21-805. He did not, however, pay any part of the filing fee. On December 13, 2002, the trial court accordingly dismissed his petition. This appeal followed.

This appeal initially followed somewhat the same pattern as the proceedings in the trial court. When an appeal is filed, a litigation tax of \$13.75 becomes due. *See* Tenn. Code Ann. §§ 67-4-602 and 604. Rather than pay, Mr. Parra-Soto filed a motion to waive the tax on the ground that he is indigent. On February 13, 2003, this court denied his motion to waive payment, and gave him ten days to either pay the tax or show cause why his appeal should not be dismissed. He subsequently filed a motion to be granted ten additional days, because of the slowness of the system that forwards checks from an inmate’s trust account. The motion was granted, and payment was finally made on March 3, 2003.

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<sup>1</sup>The Petition named as sole respondent, “Colis Newble Jr., Director Board of Probation and Parole.” Since the Board itself is the only entity that can give the relief the Petitioner was seeking, his Petition was subject to possible dismissal for failure to name a necessary party. However, a recent decision of this court implies that the trial court could have deemed the Petition to be directed against the Board itself, rather than against its chief officer. *See Robinson v. Clement*, 65 S.W.3d 632, 636 (Tenn. Ct. App. 2001)

Upon payment, followed by the filing of the record and of the briefs of the parties, this case came squarely before us for decision. In his brief, however, Mr. Parra-Soto does not at all address the reason his Petition was dismissed. Instead, he argues that the parole hearing was deficient, and that the circuit court erred by failing to appoint an attorney for him and failing to grant him an evidentiary hearing.

Tenn. Code Ann. § 41-21-807 requires an inmate who wishes to file a civil action *in forma pauperis* to pay the full amount of the filing fee. If the inmate does not have the means to pay the full amount, the statute allows partial payment from the inmate's trust account, with the balance forwarded to the court as the trust account is replenished. Failure to pay the fee constitutes grounds to dismiss the action. *Freeman v. Tennessee Dept. of Probation and Parole*, Court of Appeals No. M2002-00958-COA-R3CV (filed April 7, 2003); *see also Sweatt v. Dept. of Correction*, 88 S.W.3d 567, 571 (Tenn. Ct. App. 2002) (holding that failure to comply with another portion of Tenn. Code Ann. § 41-21-807 merits dismissal). The record of the present case shows that Mr. Parra-Soto was notified of the requirement of payment and the consequences for failure to comply. Nonetheless, he failed to make any payment. His trust fund account statement indicates he had the money to pay the filing fee or make a partial payment. He has failed to present any justification for his failure to comply with Tenn. Code Ann. § 41-21-807. Consequently, his petition was properly dismissed.

The order of the trial court is affirmed. Remand this cause to the Circuit Court of Davidson County for further proceedings consistent with this opinion. Tax the costs on appeal to the appellant.

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PATRICIA J. COTTRELL, JUDGE